

Restoring Access to Asylum: Safely Reopening Ports of Entry at the US-Mexico Border

In recent years, many families, unaccompanied children, and adults have arrived at the US-Mexico border fleeing persecution and seeking safety. Many have left their homes desperate to escape life-threatening gender- or gang-based violence. Climate, public health, and political crises in Central America, Haiti, and other regions in the Americas and elsewhere have led people to the US-Mexico border in search of safety and protection. Yet instead of responding appropriately to this humanitarian situation in accordance with our laws, the Trump administration unlawfully and cruelly cut off access to asylum at the border. **Nearly 10 months into its tenure, the Biden administration has incomprehensibly and unacceptably continued many Trump-era anti-asylum policies and has largely failed to restore access to protection. Currently, there is virtually no way to approach a port of entry and seek asylum.**

This backgrounder explains why it is critical to restore access to asylum at ports of entry and steps the Biden administration should immediately take to do so.

CBP is required to facilitate trade and travel at ports of entry.

Customs and Border Protection (CBP) Office of Field Operations (OFO) oversees the inspection and processing of goods and travelers at official US border crossings known as “ports of entry” at the US-Mexico border, as well as at the US-Canada border and at US international airports. On an average day in 2019, [nearly one million people crossed into the US](#) on foot or by car at ports of entry along the southern border for work, school, or travel. Although both US law and CBP’s mandate to facilitate trade and travel require the processing of migrants and individuals seeking asylum, ports of entry have largely remained closed to asylum seekers since the onset of the COVID-19 pandemic in March 2020.

Facilitating access to the asylum process is an essential component of CBP’s responsibility at ports of entry.

Under domestic and international law, people have the right to request asylum and the right not to be sent back to a country where they were persecuted or fear persecution. However, since the Biden administration took office, people seeking asylum [have been summarily expelled](#), without any opportunity to present their case to US officials or to undergo a protection screening, to Mexico or their countries of origin more than 600,000 times, including [76,000 expulsions of parents and children](#). These expulsions occur through the use of Title 42 of the US code, an archaic health law that the Trump administration unlawfully weaponized during the COVID-19 pandemic to deny all families, children, and single adults the opportunity to seek safety at or between ports of entry to the United States.¹

Today, ports of entry remain largely inaccessible to people seeking safety, including unaccompanied children, leading to tragic and preventable dangers and deaths.

Similarly, due to the pandemic, ports of entry are also only [open for “essential travel,”](#) which does not categorically include asylum.² Starting in November 2021, the Biden administration [plans to](#)

- 1 In September 2021, a federal court blocked the [expulsions of families under Title 42](#), deeming the policy unlawful because Title 42 does not provide the US authority to expel people seeking protection, but that order was later stayed pending appeal of the decision.
- 2 CBP continues to process tens of thousands of other travelers every day at southern border ports and in June of this year alone, [officials processed over 2 million travelers](#).

[reopen land ports of entry](#) for vaccinated travelers engaged in non-essential travel. It is not yet clear whether people who are seeking asylum (including those who are vaccinated) will continue to be denied access to ports of entry once this change occurs. **Today, ports of entry remain largely inaccessible to people seeking safety, including unaccompanied children,³ leading to tragic and preventable dangers and deaths.**

To build a “[fair, orderly, and humane](#)” system as the Biden administration promised, US land ports of entry must be open and accessible to people seeking protection. This can happen even during the ongoing COVID-19 pandemic by following common-sense public health measures recommended by experts.

There is no “right” or “wrong” way to seek asylum at the US southern border.

To be eligible for asylum, an applicant must [meet the definition of refugee](#) according to the Immigration and Nationality Act (INA); they must be outside of and unable to return to their home country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Often, migration between ports of entry is erroneously referred to as “irregular” or “illegal”—however, US law and international treaties clearly state that [people can seek asylum regardless of how they entered the country](#). In fact, an individual can be anywhere within the US and exercise the right to apply for asylum. Put simply, the way individuals arrive has no bearing on their legal right to request asylum.

Limiting access to asylum at ports of entry drives people to cross the southern border between ports along more dangerous routes.

Department of Homeland Security’s Office of Inspector General (OIG) investigations have found that when CBP routinely turns away people attempting to cross at ports of entry, the number of asylum seekers who choose to [cross between ports](#) increases. Because of current policies, individuals seeking asylum are forced to cross cartel-controlled terrain, [walk through deserts](#), or swim across the Rio Grande, risking violence, heat stroke, or drowning—something they should never have to do simply to ask for asylum. “[Prevention through deterrence](#)” policies fail to provide safe pathways to request protection and contribute to the [unnecessary and rising rates of migrant deaths](#).

Previous administrations have routinely violated domestic and international law by turning individuals away from ports of entry or otherwise limiting their access to ports.

Under the Obama administration, an unlawful practice known as “metering,” or a daily limit on asylum applications, was first implemented when, following the devastating 2010 earthquake, Haitians began arriving in Tijuana, Mexico, seeking to request asylum in the United States at the port of entry. Then in 2018, under the Trump administration, [metering became an extensive, border-wide practice](#). CBP violates domestic and international law by failing to inspect people seeking asylum at ports of entry and immediately turning them back to Mexico. According to a September 2021 federal ruling, [metering violates due process under the US Constitution](#) and “punishes” individuals who attempt to enter through ports of entry.

Inaccessible ports of entry violate refugee law and deny individuals their right to seek asylum.

Today, no process exists to allow families and adults seeking protection to enter the US through ports of entry, as they are legally entitled to do. For about five months earlier this year, [two](#)

³ Although the Biden administration exempted unaccompanied children from Title 42 expulsions, unaccompanied children often lack access to ports of entry, resulting in their crossing the US-Mexico border along more dangerous routes. In August 2021, [more than 18,000 unaccompanied children were apprehended](#) by Border Patrol and just over 300 children were processed at ports of entry during that same period.

[exemption processes to Title 42 expulsions](#) facilitated the processing of a limited number of particularly vulnerable asylum seekers into the country. Yet, in addition to still not facilitating full access to asylum, only providing small numbers of individuals their right to seek asylum creates [security challenges for people seeking protection](#) and those assisting on the ground. The UN Refugee Agency (UNHCR) has called for the full restoration of the US asylum system numerous times, emphasizing that “[g]uaranteed access to safe territory and the prohibition of pushbacks of [asylum-seekers](#) are core precepts of the 1951 Refugee Convention and refugee law.”

RECOMMENDATIONS: A well-managed border necessarily includes ports of entry that are open and accessible for people seeking asylum.

The Biden administration should:

Restore access to asylum at the border, including at ports of entry, following public health recommendations:

Since the beginning of the COVID-19 pandemic, [public health experts](#) have objected and widely [discredited restricting access to asylum at ports of entry](#) as a legitimate public health measure. Public health experts have [recommended effective safeguards](#) that should be implemented to mitigate the risk of COVID-19, including guidance that many other countries have put into place for individuals seeking protection and that the US currently uses for other travel, such as social distancing and wearing facial coverings. The Biden administration should [cease the use of illegal and inhumane Title 42 expulsions](#) at the border and restart lawful processing with COVID-19 mitigation measures, including at ports of entry.

Transparently build capacity to process people seeking protection at ports of entry while ensuring no one is metered or turned back at the border:

The Biden administration must immediately begin to transparently restore access to asylum at ports of entry and work with humanitarian organizations and legal service providers to ensure that individuals’ rights are respected. CBP must not resort to [unlawful turnbacks, metering, or queue management](#) at ports of entry. Instead, it must fully utilize its current processing capacity and implement measures to re-prioritize and sustainably and rapidly ramp up its ability to process migrants and individuals seeking protection.⁴ The memorandum and guidance formalizing [metering at ports of entry should be repealed](#), and DHS and the Department of State (DOS) must prioritize working with Mexican immigration authorities to ensure that people are not blocked from ports of entry and are able to safely approach the border.

Work with humanitarian and international stakeholders to effectively communicate asylum policy changes:

To build trust and prevent further chaos or life-threatening situations, the Biden administration must collaborate with humanitarian and international stakeholders as it develops and implements its plans to restore access to the US asylum system at the border. Humanitarian and legal nongovernmental organizations aiding migrants and individuals seeking protection at the US-Mexico border must be able to prepare and plan accordingly for forthcoming policy developments and can help mitigate the spread of misinformation or potential exploitation of migrants by smugglers or other bad actors.

⁴ Since the start of metering in 2016, CBP’s own statistics illustrate that OFO’s capacity for processing of individuals deemed inadmissible—including people seeking protection—has been artificially deflated. [Migration Crisis Action Team](#) (MCAT) reports from 2019 suggest that when operating at just 75 percent capacity to account for emerging needs, ports had the physical capacity daily to receive over 750 individuals seeking asylum borderwide. However, in the month of October 2016, CBP processed 20,524 individuals without documents at ports of entry, an average of 662 people per day, compared to just 10,030 processed in December 2018, an average of 324 per day.

Swiftly and safely transit individuals and families seeking protection from CBP custody to nonprofit shelters or other noncustodial reception locations,⁵ and ensure that they can proceed with their immigration cases in the community:

People seeking asylum should never be held in detention centers, where overcrowding, spoiled food, lack of medical care, and abuse are commonplace. Instead, they should proceed with their immigration cases with evidence-based and appropriate [community-support programs](#) and [legal representation](#). With appropriate interpretation services, prompt work authorization, and the ability to transit to destination locations, people seeking asylum can successfully navigate their cases in a timely and humane manner.

Processing requests for protection at adequately staffed, resourced, and accessible ports of entry is an essential part of an orderly, welcoming, and timely asylum system that ensures due process rights and dignity for all. When ports of entry are accessible again, community-based and legal organizations are ready to help orient people seeking asylum to their legal rights and responsibilities and assist them in navigating their immigration cases. The United States has the ability and obligation to uphold its laws to humanely afford children, families, and adults their right to seek asylum, including at ports of entry.

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5 [Unaccompanied children](#) should continue to be transferred to licensed and appropriate small-scale shelters under the Office of Refugee Resettlement at the Department of Health and Human Services.